

Executive Registry

64-151

Noted by DCI

1/20/64 ER

15 Jan 64

Honorable Richard B. Russell
 Chairman
 Committee on Armed Services
 United States Senate
 Washington, D. C.

Dear Senator Russell:

Last month I forwarded to you an Associated Press item of 4 December 1963 attributing to Dr. Ralph E. Lapp a series of statements concerning satellite photography by the United States of Russian missile installations. This item as well as other previous instances of publication of sensitive intelligence information has been of great concern to me for some time.

The possibility of additional legislation to assist in the protection of intelligence from unauthorized disclosure has been under study for several years. Work is continuing on this but in the meantime I thought it desirable to bring to your attention some of the problems in this field with which the Agency is confronted. For this purpose, I am enclosing a short study entitled "Certain Legal Aspects Re Protecting Intelligence from Unauthorized Disclosure." This short study has attached to it a draft of proposed new legislation aimed at correcting certain deficiencies in existing law. Undoubtedly further work can and will be done on this legislation prior to formal submission. However, you or your Committee might be interested in our thoughts and could well have suggestions.

TM 12 523 bW, 87

Sincerely,

TM 3 4 1/21, 87
 John A. McCone
 Director

Enclosure

O & 1 - Addressee

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1 - OGC/LC

OGC/LC:JSW:mks (7 Jan 64)

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Executive Registry
TC4-152

Noted by DDC
1/20/64

Honorable Carl Vinson *cc'd*
Chairman
Committee on Armed Services
House of Representatives
Washington, D. C.

Dear Mr. Vinson:

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Sincerely,

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John A. McCone
Director

Enclosure

Distribution:

O & 1 - Addressee

1 - DCI

✓ 1 - ER

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OGC/LC:JSW:maks (7 January 1964)

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CERTAIN LEGAL ASPECTS RE PROTECTING INTELLIGENCE
FROM UNAUTHORIZED DISCLOSURE

1. An Associated Press item of 4 December 1963 attributed to Dr. Ralph E. Lapp a series of statements concerning satellite photography by the United States of Russian missile installations. A copy of the press item is attached. Dr. Lapp was employed by the Manhattan Project from 1943 to 1947; by the Atomic Energy Commission from 1947 to 1949; by the Office of Naval Research from 1949 to 1955 and by the Nuclear Science Service from 1955 to an unspecified date. He is currently affiliated with Quadri Science Incorporated of Washington, D. C., of which Dr. Harold C. Urey is Chairman of the Board. Dr. Lapp does not have authorized access to the information which he discussed. While a considerable amount of the information in the statements attributed to Lapp has been previously published, the sum total of this information is regarded as sensitive and certainly useful to the Soviets in their political and scientific effort.

2. It is assumed for the purposes of this discussion that the statements attributed to Lapp are accurate quotations. Since the information contained in them is properly classified, this is a good

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illustration of the inability of the United States Government to take effective legal action against unauthorized disclosure of sensitive information. This discussion can be divided into two headings: (A) the possibility of prosecution and (B) the intelligence aspects of the problem under existing law.

A. Prosecution for unauthorized disclosure of classified information generally depends on the Espionage Act (section 791 through 798, Title 18, U.S.C.). This basic law was put on the books in 1911 and amended in 1917. As interpreted by the Supreme Court, * the Espionage Act has three serious deficiencies contributing to the probable failure of successful prosecution of Dr. Lapp:

(1) Under the Espionage Act, it is necessary to establish an intent on the part of Lapp that the information divulged was "to be used to the injury of the United States or to the advantage of a foreign nation." It is difficult at best to prove intent and an assertion by Lapp (or in other cases by the authors of press articles) that the purpose was to inform the American public and not to injure the United States is most convincing to the jury which must make the final judgment.

Gorin v. U. S., 312 U.S. 19 (1941)

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(2) It is also necessary to establish that the information disclosed in fact relates to the national defense and security within the meaning of the Espionage Act and this must be proved to the satisfaction of the jury. This, of course, would involve a careful explanation of why it in fact is classified and in many cases this explanation can be even more revealing than the information which was disclosed.

(3) Where documents have been transmitted they must be placed in evidence in open court and are thus available to the jury, the defense and the press. Thus, the validity of the documents is confirmed. Similarly, in the Lapp case, prosecution also confirms the validity of the information he disclosed. In this case and in most other cases the price of prosecution would not be worth the price of additional disclosure or confirmation of that which has already been disclosed.

From the viewpoint of the Government, prosecution of Lapp for this revelation of classified information would be desirable to reinforce existing control procedures and to provide deterrence. Nevertheless it can safely be said that the chances of successful prosecution of Lapp under the Espionage Act are practically zero. Even the attempt tells the world, and the Soviets, the very information the Government is seeking to protect.

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B. Turning now to the intelligence aspects, it should be noted that the National Security Act of 1947 which established the Central Intelligence Agency made the Director of Central Intelligence "responsible for protecting intelligence sources and methods from unauthorized disclosure." Unfortunately, Congress while placing this responsibility on the Director of Central Intelligence did not also give him statutory authority (or tools) to assure fulfillment of this responsibility.

(1) The extent to which the Government's hands are tied in these cases can be illustrated by the following case.

Several years ago a former employee of this Agency who had been employed as a courier was able to pick up in the course of his duties certain information of a highly classified nature. About a month after he resigned, the Agency received information that he was planning to visit the Soviet Embassy.

Furthermore, it was learned that he intended to sell the classified information he had gained while employed at CIA.

The combined legal brains of the Department of Justice, the FBI, and the CIA in considering how to prevent his entering the Soviet Embassy were unable to discover any proper legal procedure under the law. Later when he advised the Government

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that he had passed certain information for which he had been paid, no proper legal means were determined by which he could have been prosecuted. The Government could not get the necessary corroborating evidence; it would be rare indeed when a Soviet Bloc official would admit in open court that he did receive information from a former employee of an American intelligence agency.

(2) This problem of developing better protection for intelligence has been studied for some time and there is attached draft legislation which is designed to buttress the protection of intelligence by eliminating some of the deficiencies in existing law. One of the key areas where greater Government control is needed is the situation of individuals who receive the information by virtue of employment with the Government or as an employee of a contractor authorized to receive intelligence information. Consequently, the draft legislation is aimed only at individuals who receive intelligence by virtue of their employment in a position of trust. It is not aimed at the public generally or the press. In order to cope with the

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CHARLOTTE, N.C., DEC. 4 (AP)-DR. RALPH E. LAPP, APPHYSICIST WHO WORKED ON THE WARTIME MANHATTAN PROJECT, SAID TODAY SATELLITES ARE PROVIDING EXCELLENT PHOTOGRAPHS OF RUSSIAN MISSILE INSTALLATIONS.

DR. LAPP, SPEAKING AT UQUEENS COLLEGE, SAID THAT THE INFORMATION GATHERED BY HIGH-POWERED CAMERAS IN OUR SATELLITES SHOULD BE REVEALED TO THE AMERICAN PEOPLE.

DR. LAPP SAID SATELLITES HAD "ENORMOUS IMPLICATIONS" FOR SOVIET MILITARY STRATEGY.

"THEIR WHOLE STRATEGY HAS BEEN BASED ON HAVING A WALLED COUNTRY," HE SAID. "NOW TECHNOLOGY IS OPENING UP THE SOVIET UNION. THEY HAVE TO BEHAVE AS IF THEY WERE AN OPEN COUNTRY."

DR. LAPP WORKED DURING WORLD WAR II ON THE TOP-SECRET MANHATTAN PROJECT WHICH DEVELOPED THE ATOMIC BOMB. HE IS NOW WITH A WASHINGTON CONSULTING FIRM.

THE CAMERAS THAT THE UNITED STATES HAS PUT IN VRBIT, LAPP SAID, PHOTOGRAPH 70-MILE WIDE STRIPS OF LAND. THE EXPOSED FILM PASSES INTO CAPSULES THAT ARE PARACHUTED BACK TO EARTH.

THE LATEST MODEL SATELLITE, HE SAID, CARRIES SIX FILM CAPSULES, EACH ABOUT THE SIZE OF A B

THE CAMERAS THAT THE UNITED STATES HAS PUT IN ORBIT, LAPP SAID, PHOTOGRAPH 70-MILE WIDE STRIPS OF LAND. THE EXPOSED FILM PASSES INTO CAPSULES THAT ARE PARACHUTED BACK TO EARTH.

THE LATEST MODEL SATELLITE, HE SAID, CARRIES SIX FILM CAPSULES, EACH ABOUT THE SIZE OF A BUSHEL BASKET.

THE PHOTOGRAPHS, WHILE NOT AS DETAILED AS THOSE ONCE TAKEN BY CAMERAS IN U-V AIRPLANES, WILL ALLOW THE UNITED STATES TO MAKE FAIRLY ACCURATE ASSESSMENTS OF SOVIET MISSILE POTENTIAL, ACCORDING TO DR. LAPP.

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Draft
Leg.

Draft Legislation as Proposed by the USIB Ad Hoc Committee

PROTECTION OF INTELLIGENCE DATA

1. 1. This chapter shall apply within the admiralty and maritime jurisdiction of the United States, on the high seas and elsewhere, as well as within the United States.
2. 2. For the purposes of this act the term "Intelligence Data" means information and materials which for reasons of national security are specifically designated for limited or restricted distribution or dissemination by a department or agency of the United States authorized by the President so to designate as having been obtained by, or used in intelligence activities of the United States and includes but is not limited to (1) notes, models, instruments, appliances, facts, statistics, analyses, sketches, drawings, pictures, maps, graphic representation and photographs; (2) intelligence sources and methods; (3) reports, evaluations and estimates; and (4) procedures, equipment, techniques, devices and methods used in the collection and production of Intelligence Data.
3. 3. Whoever being or having been an officer or employee of any department or agency of the United States, being or having been a member of the armed forces, or being or having been a contractor of any department or agency of the United States or being or having been an employee of a contractor of any department or agency of the United States and in the course of such relationship becomes possessed of

1. information is Intelligence Data shall be fined not more than \$10,000
2. or imprisoned not more than ten years or both.

3. 5. In the interests of the security of the intelligence activities
4. of the United States the departments and agencies having responsibility
5. for the protection of Intelligence Data from unauthorized disclosure are
6. hereby authorized to promulgate with the approval of the President rules
7. and regulations for the protection of such Intelligence Data from unauthorized
8. disclosure and for ascertaining and investigating any unauthorized
9. disclosure.

10. 6. Whenever in the judgment of the Attorney General any person
11. has engaged or is about to engage in any acts or practices which constitute
12. or will constitute a violation of this act, or any regulation or order issued
13. thereunder, or Section 798 of Title 18 United States Code, the Attorney
14. General on behalf of the United States may make application to the appropriate
15. court for an order enjoining such act or practices or for an order enforcing
16. compliance with the provisions of this act, or any regulation or order
17. issued thereunder, or Section 798 of Title 18 United States Code, and upon
18. a showing that such person has engaged or is about to engage in any acts or
19. practices a permanent or temporary injunction, restraining order, or other
20. order may be granted.